

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FLOYDELL LIVINGSTON,)	
)	
Plaintiff,)	
)	
v.)	No. 4:06-CV-115 CAS
)	
ALMEDA L. BALL-TYLER,)	
)	
Defendant.)	

ORDER AND MEMORANDUM

This matter is before the Court on the application of Floydell Livingston (registration no. C1829688) for leave to commence this action without payment of the required filing fee.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six-month period. See 28 U.S.C. § 1915(b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time

the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Applicant has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint on January 25, 2006. See 28 U.S.C. § 1915(a)(1),(2). A review of applicant's account statement indicates an average monthly deposit of \$165.17, and an average monthly account balance of \$487.12. Applicant has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$97.42, which is 20 percent of applicant's average monthly balance.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Jackson Sawmill Co. v. United States, 580 F.2d 302, 306 (8th Cir. 1978).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The complaint

Plaintiff, an inmate at the St. Louis Medium Security Institution ("MSI"), seeks injunctive relief against Almeda L. Ball-Tyler (MSI Unit Manager). Although the complaint is titled "Application for Temporary Injunction" [Doc. #2], the Court will liberally construe this action as having been brought pursuant to 42 U.S.C. § 1983.

"Liability under section 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights." Madewell v. Roberts, 909 F.2d 1203, 1208 (8th Cir. 1990); see also Martin v. Sargent, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983 where plaintiff fails to allege defendant was personally involved in or directly responsible for incidents that injured plaintiff). The theory of respondeat superior is inapplicable in § 1983 actions. Boyd v. Knox, 47 F.3d 966, 968 (8th Cir. 1995).

In the instant action, plaintiff alleges that, for over eight weeks, he has sought to have "legal documentation" notarized at MSI. He states that defendant Ball-Tyler "is not personally responsible (personally) however she is the (MSI) Unit Manager and all of the social workers . . . are under her command." As such, plaintiff's claim against defendant Ball-Tyler is not cognizable under § 1983. Moreover, to the extent that plaintiff is attempting to assert an access-to-the-courts claim, he has failed to assert that he has suffered "actual prejudice with respect to contemplated or existing litigation." See Lewis v. Casey, 518 U.S. 343, 348 (1996). Plaintiff states only that "he will suffer irreparable injury in that not only is he dealing with time limitations, but he will lose ground on addressing his legal issues." Thus, having carefully reviewed plaintiff's allegations, the Court concludes that the complaint is legally frivolous.

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #4] is **GRANTED**.


IT IS FURTHER ORDERED that plaintiff's original motion for leave to proceed in forma pauperis [Doc. #1] is **DENIED** as moot.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial partial filing fee of \$97.42 within thirty (30) days from the date of this order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include

upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous or fails to state a claim upon which relief may be granted or both. See 28 U.S.C. § 1915(e)(2)(B).

An appropriate order of dismissal shall accompany this order and memorandum.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of February, 2006.